

SENATE JUDICIARY

Exhibit No. 5

Date 1-30-02

Bill No. SB 74

Amendment SB 74

1. Page 3, Line 7
Following: "suspension --"
Insert: "unlicensed activity--"

MEMORANDUM OF LAW

TO: Annie Goodwin, Commissioner
Banking and Financial Institutions

FROM: Mark Prichard, Legal Counsel

DATE: January 25, 2007

RE: Amendment to SB 74

QUESTIONS PRESENTED

1. Does the hearing and notice provisions in Section 4 of Senate Bill 74 apply to unlicensed activity?

SHORT ANSWER

1. Yes. As SB 74 is currently written, a business that is alleged to have engaged in unlicensed title lender would be entitled to a due process hearing under the Montana Administrative Procedures Act before the Division of Banking and Financial Institutions could impose civil money penalties.

DISCUSSION

Senate Bill 74 generally amends the Montana Title Loan Act. Section 4 (1) of the bill amends and revises certain enforcement procedures including specifying that all enforcement actions, including those for unlicensed activity, are subject to the notice and hearing requirements of the Montana Administrative Procedures Act ("MAPA"). The first part of Section 4(1) of SB 74 references the notice and hearing provisions under MAPA. That sentence modifies all subjects that follow including the ability of the Department to impose civil penalties and other appropriate sanctions for someone that has "operated without a license". Therefore, all Division enforcement actions under SB 74, Section 4(1) are subject to the notice and hearing provisions of MAPA.

Lane, Valencia

From: Goodwin, Annie
Sent: Thursday, January 25, 2007 11:15 AM
To: Lane, Valencia
Cc: Prichard, Mark; Leitheiser, Kris
Subject: FW: Please review 'Amendment SB 74 2nd'
Attachments: Amendment SB 74 2nd.doc

Valencia,

Here is the amendment to SB 74. Mark Prichard our division's legal counsel has also provided a short legal opinion as to this provision of the bill. I will also provide it to Senator Larry Jent.

The amendment clarifies the heading to section 31-1-811, MCA to include "unlicensed activity".

Following a careful review of the provision on page 3 starting with line 7, I did not change the provision as it fully addresses the due process afforded under MAPA for license revocation and suspension. It also is intended to provide the same MAPA due process for unlicensed practice.

I appreciate Senator's Jent's recommendation for the clarification in the heading.

Thanks for all of your help. Please call Mark Prichard or me at 841-2920 if you should have any further questions.

Annie

"31-1-811. License revocation or suspension -- unlicensed activity --restitution -- penalty.

(1) If the department finds, after providing a 10-day written notice that includes a statement of alleged violations and a hearing or an opportunity for hearing, as provided in the Montana Administrative Procedure Act, that any person, licensee, or officer, agent, employee, or representative, whether licensed or unlicensed, of the person or licensee has violated any of the provisions of this part, has failed to comply with the rules, regulations, instructions, or orders promulgated by the department, has failed or refused to make required reports to the department, or has furnished false information to the department, or has operated without a required license, the department may impose a civil penalty not to exceed \$1,000 for each violation and may issue an order revoking or suspending the right of the person or licensee, directly or through an officer, agent, employee, or representative, to do business in this state as a licensee or to engage in the business of making title loans. In addition, the department may issue an order requiring restitution to borrowers and reimbursement of the department's cost in bringing the administrative action.

(2) All notices, hearing schedules, and orders must be mailed to the person or licensee by certified mail to the address for which the license was issued or in the case of an unlicensed business to the last-known address of record.

(2)(3) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

(4) The department may reinstate any suspended or revoked license if there is not a fact or condition existing at the time of reinstatement that would have justified the department refusing to originally issue the license. If a license has been suspended or revoked for cause, an application may not be made for the issuance of a new license or the reinstatement of a suspended or revoked license for a period of 6 months from the date of suspension or revocation.

(5) All civil fines collected must be deposited in the state general fund."

Amendments to Senate Bill No. 74
1st Reading Copy

Requested by Senator Larry Jent

For the House Judiciary Committee

Prepared by Valencia Lane
January 27, 2007 (12:24pm)

1. Page 3, line 7.

Following: "suspension --"

Insert: "unlicensed activity --"

- END -